UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE CHANG, *et al.*,

Plaintiffs,

v.

ROCKRIDGE MANOR CONDOMINIUM, *et al.*,

Defendants.
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No. C-07-4005 EMC

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT; AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(Docket Nos. 17, 28, 59, 63, 67, 88)

Plaintiffs are Christine Chang and her son Eric Sun. They have sued various entities and individuals affiliated with the Rockridge Manor Condominium and the University of California, Berkeley ("University"). Currently pending are multiple motions to dismiss or, in the alternative, for a more definite statement and one motion for summary judgment. Having considered the parties' briefs and accompanying submissions, as well as the oral argument of counsel and Ms. Chang, the Court hereby **GRANTS** Defendants' motions.

I. FACTUAL & PROCEDURAL BACKGROUND

In their complaint, Plaintiffs allege as follows.

From 1991 to 2003, Plaintiffs lived in the Rockridge Manor Condominium. *See* Compl. ¶ 24. At the time that Plaintiffs moved into the Condominium, Mr. Sun was only eleven years old. *See* Compl. ¶ 24.

During the relevant period, Eva Ammann was the manager of the Rockridge Manor Homeowners Association and Charles Blakeney was the president of the Board of Directors of the Homeowners Association. *See* Compl. ¶¶ 8-9. In 1997, Ms. Ammann and several Board members

invited Ms. Chang to serve on the Board. *See* Compl. ¶ 27. Ms. Chang served on the Board from 1997 to April 2000. *See* Compl. ¶ 27. During that time, Ms. Chang realized that Ms. Ammann and the Board were embezzling from and extorting the Homeowners Association. *See* Compl. ¶ 28. Ms. Chang decided not to run for re-election in April 2000 because she disagreed with the embezzlement and extortion and because she was treated poorly by the other Board members -- *e.g.*, she was yelled at or voted down if she made objections or suggestions. *See* Compl. ¶¶ 30-31, 35. The new Board member who replaced her ended up "fighting furiously" against the other Board members and Ms. Ammann, and so these Board members and Ms. Ammann pressured Ms. Chang to serve on the Board again in place of the new Board member. Compl. ¶ 36. Ultimately, these Board members and Ms. Ammann began a campaign of persecution against Plaintiffs for the purpose of "continuing their embezzlement and extortion," Compl. ¶ 39, and to retaliate against Ms. Chang for not serving on the Board . *See* Compl. ¶¶ 46, 49, 54

Most notably, in September 2000, Ms. Chang was on vacation, leaving Mr. Sun at the Condominium, and Ms. Ammann -- aware of this fact -- called social services and the police, claiming that Mr. Sun was dangerous and had a gun in his possession. *See* Compl. ¶ 41. Ms. Ammann knew that Plaintiffs did not have a gun on the premises, that Mr. Sun was not a violent person, and that he had mental and physical disabilities. *See* Compl. ¶ 42. As a result of Ms. Ammann's actions, the police officers forced their way into the unit and restrained Mr. Sun, and Mr. Sun was locked up in a psychiatric institution. *See* Compl. ¶¶ 41-42. Ms. Ammann told Mr. Sun that "she was merely executing the Board of Directors' [sic] order." Compl. ¶ 44. Similarly, Mr. Blakeney, the president of the board, told Ms. Chang that Ms. Ammann had been following an instruction by the Board to call social services because the Board was concerned about him. *See* Compl. ¶ 48. Mr. Blakeney further sent a letter of all homeowners of the Condominium, stating that "the Board was taking actions against Plaintiffs to protect all the homeowners." Compl. ¶ 59.

Subsequently, Plaintiffs filed a complaint against (it appears) Ms. Ammann, the Board, and the Homeowners Association. *See* Compl. ¶¶ 61, 67. On December 10, 2001, the Homeowners Association issued a statement to all of the homeowners in the Condominium, notifying them of Plaintiffs' lawsuit. *See* Compl. ¶ 61. On that same day, one of the Board members (now deceased)

caused one of the homeowners, Constance Pepper Celaya, to assault and batter Plaintiffs.[1] *See* Compl. ¶ 62. Thereafter, Plaintiffs filed suit against Ms. Celaya as well. *See* Compl. ¶ 71; *see also* Univ. Defs.' RJN, Ex. A (lawsuit filed on 4/3/02). Ms. Celaya perjured herself in her answer and cross-complaint against Plaintiffs. *See* Compl. ¶ 74. She also lied during her deposition. *See* Compl. ¶ 81.

Ms. Ammann, the Homeowners Association, and the Board corrupted each of the five different attorneys who represented Plaintiffs. *See* Compl. ¶ 65. The attorneys did all that they could to absolve Ms. Ammann, the Homeowners Association, and the Board -- as well as Ms. Celaya in the other lawsuit -- of liability. *See, e.g.*, Compl. ¶¶ 72, 102, 117.

Plaintiffs' fourth attorney was Pamela Zimba. *See* Compl. ¶ 87. Ms. Zimba was hired in part to consolidate Plaintiffs' two lawsuits (one against Ms. Ammann, the Homeowners Association, and the Board and the other against Ms. Celaya) but never did so. *See* Compl. ¶¶ 87-88. Ms. Zimba waited until only a few weeks before the trial in the lawsuit against Ms. Celaya to tell Plaintiffs that the case was going to trial separately. *See* Compl. ¶ 89. When Ms. Chang objected, "[Ms.] Zimba induced Plaintiffs to go to trial by promising to obtain $5000 in settlement or [a] $100,000 judgment award in trial." Compl. ¶ 89. Ms. Zimba then told Plaintiffs that, if Mr. Sun were to take the stand in the case, it would greatly increase the likelihood of prevailing in the case. *See* Compl. ¶ 90. However, "[b]y persuading [Mr.] Sun to take the stand, [Ms.] Zimba eliminated a jury trial" as she knew that, because of his mental problems, Mr. Sun "could not face a full court with [a] jury and audience." Compl. ¶ 91. During the trial in August 2004, Ms. Zimba turned on Plaintiffs and framed Ms. Chang as the assailant rather than Ms. Celaya.[2] *See* Compl. ¶ 92. In addition, Ms. Zimba failed to seek out and present key evidence in support of Plaintiffs' case (*e.g.*, the testimony

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[1] In their opposition to the Homeowners Association's motions to dismiss and for summary judgment, Plaintiffs claim that Ms. Celaya was motivated to beat them up because the Board had announced their lawsuit against the Homeowners Association, thereby causing "dues to go up." Opp'n at 5.

[2] In their opposition to the Homeowners Association's motions, Plaintiffs claim that Ms. Zimba "framed Plaintiff Chang as the assailant by asking U.C. Berkeley Police Department Defendant Constance Celaya leading questions" and "by avoiding clarifications of Plaintiff Sun being beatened up by assailant Celaya and contracted AMNESIA." Opp'n at 8.

of third parties, the testimony of doctors, Ms. Celaya's police offensive training records). *See* Compl. ¶¶ 97-98; *see also* Pls.' Ex. 1.2, at 93, 103, 110 (trial transcript in Celaya lawsuit) (Ms. Celaya stating that she received about 20 years ago training on handling people in difficult situations -- *e.g.*, how to retain female prisoners). The judge presiding over the trial, Judge Castellanos, conspired with Ms. Zimba to ensure that Ms. Celaya would prevail in the case -- apparently because the judge was biased toward the University where her husband worked. *See* Compl. ¶ 95; *see also* Pls.' Opp'n, Ex. 1.2, at 42 (trial transcript in Celaya lawsuit) (judge stating on the record that "[m]y husband works for the U.C. system" -- "[n]ot for U.C. Berkeley but for the University of California, the president's office"; adding that "[h]e's in the audit department").

On August 11, 2004, a judgment was entered in the Celaya lawsuit, which stated that "the Plaintiff(s) Christine Chang; Eric Sun take nothing by this action from the Defendant(s), Constance Peppers Celaya and that said defendant(s) recover from the Plaintiff(s) $0.00 costs." Univ. Defs.' RJN, Ex. B (judgment). Although this was the judgment, Plaintiffs claim that this was a judgment in favor of Ms. Celaya that left open a remedy against Plaintiffs. *See* Compl. ¶ 99. According to Plaintiffs, Ms. Zimba falsely told Plaintiffs that the judgment was a nonsuit "in order to botch the ten days [sic] deadline to file [a] motion for a new trial after entry of judgment." *See* Compl. ¶ 99. Plaintiffs asked Ms. Zimba to appeal, but, to distract Plaintiffs, Ms. Zimba pressured Plaintiffs to proceed with discovery in the lawsuit against Ms. Ammann, the Homeowners Association, and the Board. *See* Compl. ¶ 101. Ms. Zimba had conspired with these Defendants to distract Plaintiffs with discovery and also to schedule the trial of this case within only a month of the trial in the case against Ms. Celaya. *See* Compl. ¶¶ 102, 105, 107. Ms. Zimba also pressured Plaintiffs to hire new counsel in this second lawsuit. *See* Compl. ¶ 105. In fact, one month before the trial (which would be about the time of the trial in the lawsuit against Ms. Celaya), Ms. Zimba told Plaintiffs to hire Albert Coombes -- an attorney whom Ms. Zimba had consulted closely on the two cases -- or otherwise she would stop representing them.[3] *See* Compl. ¶ 109.

[3] In their opposition to the Homeowners Association's motions, Plaintiffs elaborate on why Ms. Zimba pressured them to hire Mr. Coombes. According to Plaintiffs, Ms. Zimba pressured them to hire Mr. Coombes so that Plaintiffs would have to pay another retainer ($7,500 to Mr. Coombes) and enter a new retainer agreement (providing for a 33 1/3% cut for Ms. Zimba and Mr. Coombes). *See* Opp'n

As a result of all this pressure, Plaintiffs hired Mr. Coombes and then caved in and accepted an induced low settlement from Ms. Ammann, the Homeowners Association, and the Board. *See* Compl. ¶¶ 108-09.

Immediately after the assault and battery by Ms. Celaya, Ms. Chang called the University Police Department to file a complaint against Ms. Celaya, whom Plaintiffs describe as a University Police Department Dispatcher. *See* Compl. ¶¶ 19, 113; *see also* Pls.' Ex. 1.2, at 82 (trial transcript in Celaya lawsuit) (Ms. Celaya stating that she is a public safety dispatcher). Ms. Celaya's "supervisor-friend" blocked the complaint. *See* Compl. ¶ 119. Thereafter, Ms. Chang went to the University Police Department and met with Tom Klatt, whom Plaintiffs describe as the University Police Department Manager. *See* Compl. ¶ 115. Mr. Klatt received Ms. Chang's complaint and then, a few days later, left a voicemail with Ms. Chang, stating that the University Police Department would not be taking any action. *See* Compl. ¶ 115.

After Plaintiffs did not prevail in the lawsuit against Ms. Celaya, Plaintiffs took action to try to appeal but, as noted above, they were distracted from the appeal by Ms. Zimba; furthermore, the judge in the case managed to get the delivery of the trial transcript to Plaintiffs delayed "in order to abolish the six months appeal deadline against Plaintiffs." Compl. ¶ 120.

On May 18, 2005, Ms. Chang discovered that the "true judgment" in the Celaya case was not a nonsuit but rather a judgment for Ms. Celaya, purportedly with a remedy available to her. *See* Compl. ¶ 123; *see also* Pls.' Opp'n, Ex. 2.5, at 5 (hearing transcript in Celaya lawsuit) (Ms. Chang stating that "I didn't find out the true judgment until May 18th when the other case [against the Homeowners Association, etc.] was concluded"). Because Plaintiffs were concerned that Ms. Celaya might seek remedies against them, they moved to reverse the final judgment. *See* Compl. ¶ 124. On September 16, 2005, Judge Castellanos stated that the motion was untimely and further stated that there was insufficient evidence to support Plaintiffs' claims against Ms. Celaya.

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at 9. Plaintiffs contend that "Zimba and Coombes conspired to coerce the $7,500 retainer for Coombes and a new retainer agreement of 33 1/3% from damage award because they found out from the expert forensic economists that Plaintiffs have over one million dollars damages." Opp'n at 9.

See Compl. ¶ 125; *see also* Univ. Defs.' RJN, Ex. C (denying Plaintiffs' motion to vacate or set aside).

Although not entirely clear, it appears that Plaintiffs tried to serve a subpoena on the University Police Department (actually, Ms. Harrison, the Chief of Police for the University Police Department) in order to get evidence to support their motion to reverse the final judgment. *See* Compl. ¶ 126; *see also* Pls.' Ex. 2.2 (subpoena, dated 8/18/05, to Ms. Harrison; served by certified mail). However, Alan Kolling (described by Plaintiffs as the University Public Records Coordinator), Susan Von Seeburg (described as the University General Counsel), and Victoria Harrison (described as the University Police Department Chief) refused to respond to the subpoena. *See* Compl. ¶ 127. These individuals conspired with Judge Castellanos to ensure that the subpoena would not be answered. *See* Compl. ¶ 128.

It appears that, thereafter, Ms. Chang wrote to Robert Birgeneau, whom Plaintiffs describe as the University Chancellor, to complain about the actions of the individuals above as well as the conduct of Ms. Celaya. *See* Compl. ¶ 133. Mr. Birgeneau simply delegated his duties to his staff. *See* Compl. ¶ 133.

Based on the above allegations, Plaintiffs assert the following causes of action: (1) violation of Plaintiffs' constitutional rights protected by the Fourth, Fifth, Sixth, Seventh, and Fourteenth Amendments, *see* 42 U.S.C. § 1983; (2) malicious prosecution/abuse of process; (3) negligence; (4) fraud; and (5) conspiracy to defraud Plaintiffs and violate Plaintiffs' constitutional rights. Plaintiffs appear to assert these claims against all Defendants.

II. DISCUSSION

A. Legal Standard

Currently pending before the Court are the following motions: (1) the Rockridge Manor Homeowners' Association motion for summary judgment; (2) the Rockridge Manor Homeowners' Association motion to dismiss or, in the alternative, for a more definite statement; (3) Farmers Insurance Exchange's motion to dismiss or, in the alternative, for a more definite statement; (4) Ms. Zimba's motion to dismiss for failure to state a claim and for a more definite statement; (5) Mr. Coombes' motion to dismiss for lack of subject matter jurisdiction and/or failure to state a claim or,

in the alternative, for a more definite statement; and (6) the University Defendants' motion to dismiss or, in the alternative, for a more definite statement. These motions implicate the following Federal Rules of Civil Procedure.

1. Rule 12(b)(1)

Under Rule 12(b)(1), a party may move for lack of subject matter jurisdiction. Under 28 U.S.C. § 1331, a federal court has subject matter jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Under 28 U.S.C. § 1367(a), "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). A district court, however, "may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction." *Id.* § 1367(c).

2. Rule 12(b)(6)

Under Rule12(b)(6), a party may move to dismiss based on the failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). A motion to dismiss based on Rule 12(b)(6) tests for the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). All material allegations of the complaint are taken as true and construed in the light most favorable to the nonmoving party. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 340 (9th Cir. 1996). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007).

3. Rule 12(e)

Under Rule 12(e), a party may move for a more definite statement when a complaint is "so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e).

The motion "must point out the defects complained of and the details desired." Fed. R. Civ. P. 12(e). Moreover, under Rule 9(b), if there is a claim for fraud, then "the circumstances constituting fraud . . . shall be stated with particularity," although "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally." Fed. R. Civ. P. 9(b).

4. Rule 56(c)

Finally, under Rule 56(c), summary judgment shall be rendered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue of fact is genuine only if there is sufficient evidence for a reasonable jury to find for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). "The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party]." *Id.* at 252. At the summary judgment stage, evidence must be viewed in the light most favorable to the nonmoving party and all justifiable inferences are to be drawn in the nonmovant's favor. *See id.* at 255. Where the plaintiff has the ultimate burden of proof, the defendant may prevail on a motion for summary judgment simply by pointing to the plaintiff's failure "to make a showing sufficient to establish the existence of an element essential to [the plaintiff's] case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Although the bulk of the motions currently pending before the Court are motions to dismiss pursuant to Rule 12(b)(6) -- which, as noted above, focus on the complaint -- all parties, including Plaintiffs, have cited to and submitted evidence beyond the complaint. Under Rule 12(d), "[i]f, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d). "In providing notice to the parties, 'a district court need only apprise the parties that it will look beyond the pleadings to extrinsic evidence and give them an opportunity to supplement the record.'" *San Pedro Hotel Co. v. City of Los Angeles*, 159 F.3d 470, 477 (9th Cir. 1998).

B. Rockridge Manor Homeowners Association

Rockridge Manor Homeowners Association has filed two motions: (1) a motion to dismiss or, in the alternative, for a more definite statement and (2) a motion for summary judgment. The Court shall address the latter motion first.

1. Motion for Summary Judgment

In its motion for summary judgment, the Homeowners Association argues that there is no genuine dispute of material fact that all claims against it must be dismissed because of the release and covenant not to sue that Plaintiffs signed with the Homeowners Association in February 2005. *See* Conroy Decl., Ex. F (release). As part of the release, Plaintiffs dismissed with prejudice a state law suit against various defendants, including the Homeowners Association, and agreed that they

> hereby release and forever discharge releases of any and all claims, demands, actions, causes of action, lien claims, obligations, liabilities of any nature whatsoever and damages, whether or not now known, suspected or claimed, including, without limitation court costs, attorneys fees and other expenses which the plaintiffs' [sic] ever had, now have, or hereafter may have or claim to have against releases, including any claims directly or indirectly arising out of the incidents and matters which are alleged by plaintiffs to have occurred on or about September 20, 2000, and at all other times.

Conroy Decl., Ex. F at 2-3. In addition, Plaintiffs stated that they

> full understand and expressly waive their rights or benefits under Section 1542 of the Civil Code of California, which provides:
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> > A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Conroy Decl., Ex. F at 4.

In light of the release, the Court agrees with the Homeowners Association that summary judgment is warranted. In so ruling, the Court acknowledges Plaintiffs' contention that they were fraudulently induced into signing the release by their attorneys (*i.e.*, Ms. Zimba and Coombes) who were conspiring with the Homeowners Association to deprive her of her civil rights. Even if as a theoretical matter, fraud in the inducement could vitiate a release, the Court finds this argument unavailing.

First, Plaintiffs' unilateral mistake in signing cannot render the release voidable unless the Homeowners Association had reason to know of the mistake or caused the mistake or unless the effect of the mistake is such that enforcement of the contract would be unconscionable. *See Donovan v. RRL Corp.*, 26 Cal. 4th 261, 280-82 (2001). Plaintiff have failed to present any facts which gives rise to a genuine factual dispute as to this element.

Plaintiffs do allege that the Homeowners Association conspired with Plaintiffs' attorneys, thus implying the Homeowners Association had knowledge sufficient to vitiate the release. But as discussed in greater detail below in Section II.B.2.c., neither the allegations of the complaint nor any evidence presented by Plaintiffs are sufficient to establish a plausible conspiracy.

Moreover, the Court notes that the particular "evidence" Plaintiffs cite here is insufficient to establish such plausibility. Plaintiffs assert that there was a conspiracy because, *e.g.*, Ms. Zimba framed Ms. Chang as the assailant during the trial in the Celaya lawsuit, falsely told Plaintiffs that the judgment in the Celaya lawsuit was a nonsuit, and distracted Plaintiffs from appealing the judgment in the Celaya lawsuit by pressuring Plaintiffs to proceed with discovery in the lawsuit against Ms. Ammann, the Homeowners Association, and the Board. However, the transcript of the trial in the Celaya case, which the Court has reviewed, does not demonstrate Ms. Zimba "framed" her own client. As for the judgment in the Celaya case, whether it was improperly characterized as a "nonsuit" is immaterial to Plaintiffs' legal position. Finally, that Ms. Zimba proceeded with discovery in the second lawsuit in the immediate aftermath of the Celaya lawsuit was only to be expected since the trial in that case was upcoming. There is no evidence of a conspiracy sufficient to create genuine issue of fact.

Accordingly, the Court grants the Homeowners Association's motion for summary judgment. There is no genuine dispute of material fact that Plaintiffs' claims are barred by the release and covenant not to sue that Plaintiffs signed with the Homeowners Association (among others) in February 2005.

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2. Motion to Dismiss

Although dismissal of Plaintiffs' lawsuit against the Homeowners Association is appropriate for the reasons stated above, the Court shall also address the Homeowners Association's motion to dismiss as there are independent reasons as to why dismissal is proper.

a. Statute of Limitations

First, all of the claims asserted, except for the fraud claims, are barred by the statute of limitations. Except for the fraud claims, the proper statute of limitations is two years. *See* Cal. Code Civ. Proc. § 335.1 (providing for a two-year statute of limitations for "[a]n action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another"); *Maheu v. CBS*, 201 Cal. App. 3d 662, 673 (1988) (noting that, "[i]n an action based on civil conspiracy, the applicable statute of limitations is determined by the nature of the action in which the conspiracy is alleged"); *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004) (stating that the statute of limitations for a § 1983 claim is dictated by "the statute of limitations for personal injury actions in the forum state"). Plaintiffs filed the instant case on August 3, 2007. Thus, with the two-year statute of limitations, the allegedly wrongful conduct by the Homeowners Association had to have occurred by August 3, 2005, in order to be actionable.

As is evident from Plaintiffs' complaint, the allegedly wrongful conduct by the Homeowners Association took place well before August 3, 2005. For example, the incident in which Ms. Ammann called social services and the police (at the behest of the Board) took place in September 2000. Other alleged persecution by Ms. Ammann, Mr. Blakeley, and the Homeowners Association would have to have ended by 2003, when Plaintiffs moved out of the Condominium. As for the alleged conspiracy between the Rockridge Defendants and the other Defendants, that would have been over by late 2004 and early 2005 when the two state lawsuits were resolved.[4] Notably, at the

[4] There was a bench trial in the lawsuit against Ms. Celaya in August 2004. *See* Univ. Defs.' RJN, Ex. B (judgment). The lawsuit against the Homeowners Association settled in February 2005. *See* Conroy Decl., Ex. F (release). While there were proceedings in the Celaya lawsuit in September 2005, *see* Univ. Defs.' RJN, Ex. C (order), there is no sufficient allegation establishing that Ms. Ammann, Mr. Blakeley, or the Homeowners Association were conspiring with anyone at that point to do anything against Plaintiffs since the lawsuit against the Homeowners Association had settled.

hearing, Plaintiffs could not make any allegation or point to any evidence of wrongful conduct by the Homeowners Association on or after August 3, 2005.

Moreover, the Court takes note that evidence supplied by Plaintiffs themselves establishes that their claims (except for the fraud claims) are barred by the statute of limitations. That is, even if there were a conspiracy between the Homeowners Association and Plaintiffs' attorneys, Plaintiffs were clearly aware of the conspiracy well before August 3, 2005. *See RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1058 (9th Cir. 2002) ("A statute of limitations under § 1983 . . . begins to run when the cause of action accrues, which is when the plaintiffs know or have reason to know of the injury that is the basis of their action."); *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1110 (1988) ("Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing . . . ."). For example, in a letter to Ms. Zimba dated April 26, 2005, Ms. Chang charges her attorney with having "worked with the defense attorney who stopped defendants from answering questions related to assault/battery case." Pls.' Ex. 5.8, at 5 (letter, dated April 26, 2005); *see also id.* at 4 ("In the homeowners association case, I believe you purpose[ful]ly covered up defendants' property crimes in embezzlement, aiding & abetting in embezzlement, conspiracy against homeowners, [etc.]"). Subsequently, in a letter of complaint to the California State Bar, dated June 4, 2005, Ms. Chang asserted that "Constance Celaya and Mike Solomon [one of the Board members] were able to corrupt all our attorneys sabotaging our complaints against the board of directors of homeowner association and Constance Celaya's assault/battery." Pls.' Ex. 5.9, at 2 (letter, dated June 4, 2005). Similarly, in another letter of complaint to the Bar, dated June 20, 2005, Ms. Chang claimed that Ms. Zimba and Mr. Coombes "conspired in botching the Homeowners Association case . . . the same way as the assault/battery case [against Ms. Celaya]." Pls.' Ex. 5.91, at 1 (letter, dated June 20, 2005).

The Court therefore concludes that the statute of limitations bars all of the claims asserted against the Homeowners Association, except for the fraud claims.

b. Claims for Fraud and Conspiracy to Defraud

While the fraud claims against the Homeowners Association have a three-year statute of limitations and therefore may not be time barred in their entirety, *see* Cal. Code Civ. Proc. § 338(d)

(providing for a three-year statute of limitations for "[a]n action for relief on the ground of fraud or mistake"), they should nevertheless be dismissed for failure to comply with Federal Rule of Civil Procedure 9(b), which provides that, "[i]n alleging fraud or mistake, a party must state *with particularity* the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b) (emphasis added). What this means is that allegations of fraud must be "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Neubronner v. Milken*, 6 F.3d 666, 671 (9th Cir. 1993). "A pleading is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations. The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity." *Id.* at 671-72. "[M]ere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989).

In the instant case, the complaint lacks the specificity required by Rule 9(b) to give the Homeowners Association notice of the specific misconduct alleged to constitute the fraud so that it can defend itself against the charge. Certainly, the complaint fails to identify facts such as the times, dates, and places of the alleged fraud. In fact, the Court does not discern where in the complaint Plaintiffs have alleged any false representation, concealment, or nondisclosure by the Homeowners Association. *See Robinson Helicopter Co., Inc. v. Dana Corp.*, 34 Cal. 4th 979, 990 (2004) ("The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage."). The fact that the Association allegedly concealed its conspiracy with the other Defendants from Plaintiffs does not mean that Plaintiffs thereby have a cause of action for fraud -- otherwise all conspiracies would be frauds. The concealment of the conspiracy is only relevant to the issue of when Plaintiffs' claims related to the conspiracy would accrue. *See Grisham v. Philip Morris U.S.A., Inc.*, 40 Cal. 4th 623, 638 (2007) ("A defendant's fraud in concealing a cause of action against him will toll the statute of limitations, and that tolling will last as long as a plaintiff's reliance on the misrepresentations is reasonable."). No specific fraudulent misrepresentation is alleged.

Moreover, the claim for conspiracy to defraud is deficient because, for the reasons discussed below, Plaintiffs have failed to allege plausible grounds for the alleged conspiracy.

c. Claim for Conspiracy to Violate Civil Rights

For the reasons discussed above, Plaintiffs' claim for conspiracy to violate their civil rights is barred by the statute of limitations. However, even if this hurdle could be overcome, Plaintiffs have failed to state a claim for conspiracy.

As noted above, in *Bell Atlantic*, the Supreme Court explained that, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic*, 127 S. Ct. at 1964-65. More specifically, there must be "plausible grounds" to support a claim for relief. *Id.* at 1965. Where allegations of a conspiracy are merely "conceivable" rather than "plausible," the claim must be dismissed. *Id.* at 1974.

In the case at bar, Plaintiffs have failed to articulate even a conceivable basis for conspiracy, let alone a plausible one. Plaintiffs' complaint asserts in essence that there was a massive conspiracy involving the Homeowners Association, its insurer, the five attorneys retained by Plaintiffs, the University and its employees, and a Superior Court judge to deprive Plaintiffs of their right to a fair trial in the two state court lawsuits (*i.e.*, the lawsuit against Ms. Celaya and the lawsuit against Ms. Ammann, Mr. Blakeley, and the Homeowners Association). Such a far reaching fantastic conspiracy is hardly plausible on its face, but in any event, Plaintiffs fail to allege any specific facts which establishes a plausible claim. The implausibility of their conspiracy allegation is underscored by Plaintiffs' assertion that all of their attorneys were involved in the conspiracy, in particular, the two Attorney Defendants sued herein, Ms. Zimba and Mr. Coombes. Plaintiffs contend that, as part of the conspiracy, the two Attorney Defendants conspired with the Homeowners Association and others to turn the suit against Ms. Celaya against her and pressured Plaintiffs into accepting a low settlement from the Homeowners Association to resolve the second state court lawsuit. However, that her own attorneys would have so conspired makes no logical

sense since this would have been against the attorneys' own economic interest. According to Plaintiffs, the attorneys forced Plaintiffs to enter a new retainer agreement that would give them 33 1/3% of any damage award. It makes no sense why the attorneys would undermine cases in which they had an economic interest. Opp'n at 9.

As a final point, it is worth noting that, at the hearing, Plaintiffs claimed that, based on their inability to attract counsel for this case, the massive conspiracy against them had spread even further to include a bar association referral service. Once again, this demonstrates that Plaintiffs' claim of conspiracy is ultimately nothing more than speculation. Indeed, not only does the conspiracy allegation fall far short of *Bell Atlantic*, it is patently fanciful and insubstantial. *See Rice v. U.S. Supreme Court*, 2003 U.S. Dist. LEXIS 22860 (N.D. Cal. 2003) at *2-3 (court may dismiss under Rule 12(b)(6) if complaint is "patently insubstantial"); *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1462 (C.D. Cal. 1996) (court need not accept as true "unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations" in ruling on 12(b)(6) motion). *Cf. Neitzke v. Williams*, 490 U.S. 319, 328 (1989) (28 U.S.C. § 1915 gives a court "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless" -- *e.g.*, "fantastic or delusional scenarios" in cases filed *in forma pauperis*).

d. Section 1983 Claim

Even if Plaintiffs adequately stated a claim for relief for conspiracy to violate civil rights, a further problem for Plaintiffs (aside from the statute-of-limitations problem) is their failure to state a claim that their civil rights were violated in the first place. In their complaint, Plaintiffs conclusorily assert that their rights were violated pursuant to the Fourth, Fifth, Sixth, Seventh, and Fourteenth Amendments, but none of the misconduct alleged in the complaint constitutes a violation of any of these provisions. For example:

(1) The Fourth Amendment protects against unreasonable searches and seizures. The only search or seizure referred to in the complaint was the search of Plaintiffs' condominium unit in September 2000 when Ms. Ammann called the police and social services. However, that action of Ms. Ammann does not make her a state actor who may be sued under § 1983. *See, e.g.*, *Hughes v. Meyer*, 880 F.2d 967, 972 (7th Cir. 1989) ("[P]rivate parties are not state actors when they merely

call on the law for assistance, even though they may not have grounds to do so; 'there must be a conspiracy, an agreement on a joint course of action in which the private party and the state have a common goal.'"); *Collins v. Womancare*, 878 F.2d 1145, 1155 (9th Cir. 1989) ("[M]erely complaining to the police does not convert a private party into a state actor."); *Carey v. Continental Airlines, Inc.*, 823 F.2d 1402, 1404 (10th Cir. 1987) ("Gilbert's complaining about Carey's presence to a Tulsa police officer who, acting within the scope of his statutory duties, arrested Carey [for trespassing] after questioning him, does not, without more, constitute state action for which Gilbert can be held responsible.").

(2) The Fifth Amendment's due process clause is applicable only to the federal government, not the state. *See Gerena v. Puerto Rico Legal Services, Inc.*, 697 F.2d 447, 449 (1st Cir. 1983) ("The due process clause of the fifth amendment . . . applies to actions of the federal government . . . ."); *Knoetze v. U.S. Dep't of State*, 634 F.2d 207, 211 (5th Cir. 1981) ("[F]ifth amendment protection attaches only when the federal government seeks to deny a liberty or property interest."); *Hester v. Lowndes County Comm'n*, No. 2:06cv572-WHA (WO), 2006 U.S. Dist. LEXIS 63084, at *9 (M.D. Ala. Sept. 1, 2006) ("[T]he Fifth Amendment's Due Process Clause applies only to the federal government, not to state governments and state or local officials."); *Hewes v. Rhode Island Dep't of Corr.*, No. 00-205 S, 2003 U.S. Dist. LEXIS 3256, at *10 (D.R.I. Feb. 11, 2003) ("The Fifth Amendment due process clause 4 applies to the actions of the federal government and its agents, and not the state government or its agents."); *Learnard v. Inhabitants of Van Buren*, 164 F. Supp. 2d 35, 41 n. 3(D. Me. 2001) ("The Fifth Amendment Due Process Clause applies to the federal government rather than a state government . . . ."); *Basile v. Elizabethtown Area Sch. Bd. of Sch. Dirs.*, 61 F. Supp. 2d 392, 403 (E.D. Pa. 1999) ("The due process clause of the Fifth Amendment is limited to acts of the federal government and has no application to state government actions."). Plaintiffs' complaint contains no allegations against the federal government or a federal government official.

(3) The Sixth Amendment provides for the right to effective assistance of counsel but it applies only for criminal cases, not civil cases. *See Pokuta v. TWA*, 191 F.3d 834, 840 (7th Cir. 1999) ("[T]he well-settled general rule is that there is no constitutional or statutory right to the

effective assistance of counsel in civil cases."); *United States v. Bodre*, 948 F.2d 28, 37 n.7 (1st Cir. 1991) ("It is well-settled that the Sixth Amendment right to effective assistance of counsel applies only to critical stages of criminal prosecutions."); *see also Anderson v. Sheppard*, 856 F.2d 741, 747-48 (6th Cir. 1988) ("'A criminal defendant's right to counsel arises out of the sixth amendment, and includes the right to appointed counsel when necessary.' In contrast, '[a] civil litigant's right to retain counsel is rooted in fifth amendment notions of due process; the right does not require the government to provide lawyers for litigants in civil matters.'"). Plaintiffs had only civil lawsuits in state court.

(4) The Seventh Amendment provides for the right to a jury trial. Plaintiffs apparently decided to waive their right to a jury trial in the Celaya lawsuit based on advice by Ms. Zimba. They were allegedly told by Ms. Zimba, if Mr. Sun were to "represent himself in the trial to take the stand, it would greatly increase the opportunity to win the case and judgment award." Compl. ¶ 90. The problem for Plaintiffs is that the Seventh Amendment does not apply to state court proceedings. The Celaya lawsuit was a state court proceeding. *See Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 432 (1996) ("The Seventh Amendment . . . governs proceedings in federal court, but not in state court . . . ."); *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1488 (5th Cir. 1992) ("'T]he 7th Amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials by jury in state courts, or the standards which must be applied concerning the same.'"); *R.J. Reynolds Tobacco Co. v. Bonta*, 272 F. Supp. 2d 1085, 1110-11 (E.D. Cal. 2003) ("It is established that the right to a jury trial in civil cases under the Seventh Amendment is not among those provisions of the Bill of Rights that have been made applicable to the states through the Fourteenth Amendment.").

(5) As for the Fourteenth Amendment, there are no allegations supporting a violation of the equal protection clause. Nor is it clear that there is any violation of due process based on the allegations in the complaint. Although, arguably, Plaintiffs' complaint suggests that Plaintiffs' rights to due process were violated because Defendants' actions -- *i.e.*, conspiring together -- deprived them of the right to a fair trial in both of the state lawsuits, state action is required for a § 1983 claim. While a conspiracy among private and state actors can give rise to state action, *see*

Franklin v. Fox, 312 F.3d 423, 444-45 (9th Cir. 2002) (noting that "[a] § 1983 plaintiff . . . must show that a defendant's actions are 'fairly attributable' to the government" and that "[a] private individual's action may be 'under color of state law' where there is 'significant' state involvement in the action" -- *e.g.*, where a private individual and state officials "'have acted in concert in effecting a particular deprivation of constitutional rights'"), and Plaintiffs have alleged a conspiracy involving private and state actors (*e.g.*, the University or the presiding judge in the Celaya lawsuit), for the reasons stated above, the conspiracy claim as alleged is neither conceivable nor plausible and is subject to dismissal under *Bell Atlantic*.

e. Claims for Malicious Prosecution, Abuse of Process, and Negligence

Finally, with respect to the remaining state law claims for malicious prosecution, abuse of process, and negligence, even if there were no statute-of-limitations bar, Plaintiffs have failed to state a claim for relief.

"To prevail on a malicious prosecution claim, the plaintiff must show that [a] prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause; and (3) was initiated with malice." *Soukup v. Law Offices of Herbert Hafif*, 39 Cal. 4th 260, 292 (2006). Plaintiffs have failed to state a claim for malicious prosecution because they have not alleged that the Homeowners Association ever initiated any lawsuit against Plaintiffs.

"The common law tort of abuse of process arises when one uses the court's process for a purpose other than that for which the process was designed." *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1056 (2006). "To succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings." *Id.* at 1057. Plaintiffs have failed to state a claim for abuse of process because they have not even identified what state court process was used by the Homeowners Association with an ulterior motive.

"The elements of a cause of action for negligence are commonly stated as (1) a legal duty to use due care; (2) a breach of that duty; (3) a reasonably close causal connection between that breach and the resulting injury; and (4) actual loss or damage." *Ahern v. Dillenback*, 1 Cal. App. 4th 36, 42

(1991). Plaintiffs have failed to state a claim for negligence as they have only made a conclusory allegation of a duty owed to them by the Homeowners Association. *See Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 985 (1993) (noting that a legal "duty may be imposed by law, be assumed by the defendant, or exist by virtue of a special relationship"). No basis for imposing such a duty is alleged. Furthermore, Plaintiffs have failed to explain how that duty was breached by the Association.

C. Farmers Insurance Exchange

Farmers Insurance Exchange has moved to dismiss or, in the alternative, for a more definite statement. The Court concludes that dismissal is appropriate for the following reasons.

First, Plaintiffs have failed to allege in the complaint any wrongdoing by Farmers Insurance. Plaintiffs appear to have sued Farmers Insurance simply on the basis that it was the insurance company for the Homeowners Association during the relevant period. *See* Compl. ¶ 10. *But see* Opp'n at 3 (suggesting that Farmers Insurance conspired with the Rockridge Defendants and Plaintiffs' attorneys to "sabotage" Plaintiffs' lawsuits).

But even if Farmers Insurance had engaged in wrongdoing by being part of the grand conspiracy against Plaintiffs,[5] the two-year statute of limitations would be a bar against all claims asserted against the insurance company, except for the fraud claims. Farmers Insurance's involvement with Plaintiffs was over by around February 2005, when the state case against the Homeowners Association was settled. *See* Conroy Decl., Ex. F (release).

As to the remaining fraud claims, Plaintiffs have failed to meet the particularity requirement of Rule 9(b). In addition, the claim for conspiracy to defraud is inadequate as Plaintiffs have failed to allege plausible grounds for any conspiracy sufficient under *Bell Atlantic*. The conspiracy claim against Farmers Insurance Exchange is dismissed with prejudice since the conspiracy allegations are so implausible and fantastic, they cannot possibly be cured by amended allegations. The other

[5] At the hearing, Plaintiffs suggested that Farmers Insurance had engaged in wrongdoing by hiring the defense attorneys who coerced her into settlement with the Homeowners Association. Plaintiffs fail to cite any authority for the proposition that the mere hiring of defense counsel establishes actionable wrongdoing by the insurer.

claims with the exception of the fraud claim are also dismissed with prejudice. The fraud claim is dismissed without prejudice.

D. Attorney Defendants

The two Attorney Defendants are Ms. Zimba and Mr. Coombes. Ms. Zimba has moved to dismiss for failure to state a claim and for a more definite statement; Mr. Coombes has moved to dismiss for lack of subject matter jurisdiction and/or failure to state a claim or, in the alternative, for a more definite statement.

Similar to above, all of the claims except for the fraud claims are barred by the two-year statute of limitations. Indeed, actions against attorneys for wrongful acts or omissions other than actual fraud are subject to a limitations period of one year after discovery. CCP § 340.6(a). As the alleged wrongdoing of her attorneys was apparent to Plaintiffs by August 2005, as noted above, any malpractice claim is time-barred. Moreover, for the reasons discussed in Part II.B.2.c-e (regarding conspiracy, § 1983, state torts), Plaintiffs have failed to state a claim for relief with the exception of the negligence claims. For the negligence claim, the Court acknowledges that Plaintiffs have adequately alleged a legal duty -- *i.e.*, a special relationship between the attorneys and Plaintiffs as their clients. However, Plaintiffs have not adequately explained how that duty was breached. In any event, as noted above, the negligence claim is barred by the statute of limitations.

As for the fraud claims, the Court dismisses the claim for conspiracy to defraud because of insufficient allegations of conspiracy as noted above. As to the remaining direct claim for fraud, Ms. Zimba seeks only a more definite statement. Given the particularity requirement of Rule 9(b), the Court grants the request. Plaintiffs shall provide a more definite statement as to the basis of their claim for fraud. In particular, they must specify such facts as the times, dates, and places of the fraud, the benefits received by Ms. Zimba, and other details of the alleged fraudulent activity. The allegations of fraud must be "specific enough to give [Ms. Zimba] notice of the particular misconduct which is alleged to constitute the fraud charged so that [she] can defend against the charge and not just deny that [she has] done anything wrong." *Neubronner*, 6 F.3d at 671.

As for the direct fraud claim against Mr. Coombes, Mr. Coombes does seek dismissal (and not just a more definite statement). The Court finds that dismissal is warranted, again on the basis of

Rule 9(b). Notably, at the hearing, Plaintiffs could not cite any fraudulent statement by Mr. Coombes, simply relying on the theory that he was Ms. Zimba's superior. This dismissal shall be without prejudice.

For the reasons stated above, the conspiracy claims against the Attorney Defendants are dismissed with prejudice as are § 1983 claims and non-fraud state tort claims. As to the fraud claim against Ms. Zimba, Plaintiffs shall file a more definite statement. The fraud claim against Mr. Coombes is dismissed without prejudice.

E. University Defendants

Finally, the University Defendants move to dismiss or, in the alternative, for a more definite statement.

Once again, for the nonfraud claims, the two-year statute of limitations is a bar to any claim based on conduct of the University employees that occurred prior to August 3, 2005. This includes the alleged assault by Ms. Celaya, and the University employees' failure to discipline Ms. Celaya for the alleged assault after Ms. Chang made complaints about Ms. Celaya's behavior in the immediate aftermath of the alleged assault. The only conduct that occurred within the statute of limitations (*i.e.*, after August 3, 2005) appears to be (1) the University employees' failure to respond to the subpoena that Plaintiffs served on Ms. Harrison (the Chief of Police for the University Police Department) in the attempt to get evidence to support their motion to reverse the final judgment, *see* Compl. ¶ 126; *see also* Pls.' Opp'n, Ex. 2.2 (subpoena, dated 8/18/05, to Ms. Harrison; served by certified mail) and (2) the conspiracy among Mr. Kolling (the University Public Records Coordinator), Ms. Von Seeburg (described as the University General Counsel), and Ms. Harrison -- along with Judge Castellanos – to ensure that the subpoena would not be answered. *See* Compl. ¶ 128 ("These U.C. Berkeley Staff conspired with Judge Castellanos to fraudulently defraud against Plaintiffs Chang and Sun's subpoena.").

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However, Plaintiffs have failed to show that such conduct constitutes a constitutional violation (*i.e.*, a § 1983 claim).[6] Moreover, such conduct does not give rise to a claim for malicious prosecution (the University employees did not initiate a lawsuit against Plaintiffs) or a claim for negligence (there is only a conclusory allegation of a legal duty owed by the University employees to Plaintiffs). As for abuse of process, Plaintiffs have failed to allege that the University employees "(1) contemplated an ulterior motive in using the [court] process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings." *Rusheen*, 37 Cal. 4th at 1057. Finally, for the three state law claims, the litigation privilege applies. *See Foothill Federal Credit Union v. Superior Court*, 155 Cal. App. 4th 632 (2007) (holding that plaintiffs' claims against defendants based on defendants' disclosure of documents in response to a subpoena in another case were barred by the litigation privilege). Although these claims appear fundamentally deficient, in view of Plaintiffs' *pro se* status, they are dismissed without prejudice.

With respect to these nonfraud claims that are not time barred, both federal and state, Eleventh Amendment immunity protects the University and the University employees in their official capacities. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1984) (noting that Eleventh Amendment immunity "applies . . . to state-law claims brought into federal court under pendent jurisdiction"). For the remaining nonfraud claims against the University employees in their individual capacities, the conspiracy claim fails because as noted above, Plaintiffs have not alleged specific facts establishing plausible grounds for a conspiracy. That Judge Castellanos's spouse allegedly worked in the audit department of the University president's office does not in and of itself make a conspiracy plausible, especially since Judge Castellanos directly informed the parties, and did not conceal from them, her husband's affiliation. As for the alleged

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[6] Because Plaintiffs have failed to do so, the University employees in their individual capacities are also entitled to qualified immunity on the § 1983 claim. As Plaintiffs cannot establish that the alleged conduct violated the Constitution, Plaintiffs cannot *a fortiorari* show that Defendants violated their "clearly established" constitutional rights. *See Spoklie v. Montana*, 411 F.3d 1051,1060 (9th Cir. 2005) ("State officials have qualified immunity from civil liability under § 1983 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'").

conspiracy between the University employees and the other Defendants, the contention is sheer speculation lacking plausibility.

This leaves only the fraud claims against the University Defendants. Consistent with above, Eleventh Amendment immunity protects both the University and the University employees in their official capacities. Also consistent with above, the claim for conspiracy to defraud is dismissed based on insufficient allegations of conspiracy.

With respect to the remaining direct fraud claim against the University employees in their individual capacities, Plaintiffs have failed to state a claim for relief because they have not alleged that the University employees ever made a false representation or concealment of any kind. All that the employees purportedly did was refuse to produce documents subpoenaed by Plaintiffs and then perhaps voluntarily give those documents to Ms. Celaya who then submitted the documents to Judge Castellanos. But the remedy for the University employees' action was for Plaintiffs to move to compel the documents in the state court proceeding -- not to initiate a lawsuit in federal court. Fraud has not been sufficiently alleged.

All claims against the University Defendants are dismissed with prejudice with the exception of fraud claims against individual University Defendants in their individual capacities, which shall be dismissed without prejudice.

III. CONCLUSION

For the foregoing reasons, the Court hereby rules as follows.

(1) The Homeowners Association's motion for summary judgment is granted. The release signed by Plaintiffs bars as a matter of law all claims asserted against the Homeowners Association.

(2) Alternatively, the Homeowners Association's motion to dismiss or, in the alternative, for a more definite statement is granted. All claims, except for the fraud claims, are barred by the statute of limitations. The dismissal of these claims is with prejudice. With respect to the fraud claims, the claim for conspiracy to defraud is dismissed with prejudice. The conspiracy claim is fantastic, speculative and implausible and not subject to repair by amendment. As for the direct claim for fraud, the allegations of fraud fail to meet the

particularity requirement of Rule 9(b). Were it not for the grant of summary judgment, dismissal of the fraud claim would be without prejudice.

(3) Farmer Insurance's motion to dismiss or, in the alternative, for a more definite statement is granted. The nonfraud claims are barred by the statute of limitations and dismissed with prejudice. With respect to the fraud claims, the claim for conspiracy to defraud is dismissed with prejudice. As for the direct claim for fraud, the allegations of fraud fail to meet the particularity requirement of Rule 9(b). The dismissal of the fraud claim shall be without prejudice.

(4) Ms. Zimba's motion to dismiss or, in the alternative, for a more definite statement is granted. The nonfraud claims are barred by the statute of limitations and dismissed with prejudice. With respect to the fraud claims, the claim for conspiracy to defraud is dismissed with prejudice. As for the direct claim for fraud, Plaintiffs shall provide a more definite statement for the remaining fraud claims by February 29, 2008 or otherwise be subject to dismissal with prejudice.

(5) Mr. Coombes's motion to dismiss for lack of subject matter jurisdiction and/or failure to state a claim or, in the alternative, for a more definite statement is granted. The nonfraud claims are barred by the statute of limitations and dismissed with prejudice. With respect to the fraud claims, the claim for conspiracy to defraud is dismissed with prejudice. As for the direct claim for fraud, the allegations of fraud fail to meet the particularity requirement of Rule 9(b). The dismissal of the fraud claim shall be without prejudice.

(6) The University Defendants' motion to dismiss or, in the alternative, for a more definite statement is granted. The nonfraud claims based on conduct before August 3, 2005, are dismissed with prejudice. The nonfraud claims based on conduct on or after August 3, 2005, are dismissed with prejudice to the extent they are asserted against the University and the University employees in their official capacities. To the extent the nonfraud claims are asserted against the University employees in their individual capacities, Plaintiffs have failed to state a claim for relief. The dismissal of these nonfraud claims against University employees in their individual capacities is without prejudice. For the fraud claims, to the

extent they are asserted against the University and the University employees in their official capacities, they are dismissed with prejudice. To the extent the fraud claims are asserted against the University employees in their individual capacities, the claim for conspiracy to defraud is dismissed with prejudice. As for the remaining direct claim for fraud against the University employees in their individual capacities, they are dismissed without prejudice.

(7) The University Defendants' request for judicial notice, which was unopposed, is granted.

Where the Court has dismissed a claim with prejudice, Plaintiffs are barred from making an amendment to any such claim and may not reassert them. Where the dismissal is without prejudice, Plaintiffs may file an amended complaint if they so choose by February 29, 2008. Any amended complaint must be in compliance with Federal Rule of Civil Procedure 11, which requires, *inter alia*, that "the factual contentions [in a pleading] have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11(b)(3). Plaintiffs are forewarned that, should they fail to comply with Rule 11, they risk being sanctioned. *See* Fed. R. Civ. P. 11(c) (providing, *inter alia*, that a court may award both monetary and nonmonetary sanctions). Any more definite statement ordered herein shall also be filed by February 29, 2008.

Furthermore, should Plaintiffs elect to proceed in this Court with non-federal claims, the Court reserves the authority to examine whether it should continue to exercise supplemental jurisdiction over said claims or decline to do so under 28 U.S.C. § 1367(c)(3).

This order disposes of Docket Nos. 17, 28, 59, 63, 67, 88.

IT IS SO ORDERED.

Dated: February 13, 2008

EDWARD M. CHEN
United States Magistrate Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTINE CHANG, *et al.*,

Plaintiffs,

v.

ROCKRIDGE MANOR CONDOMINIUM, *et al.*,

Defendants.
_____/

No. C-07-4005 EMC

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

Christine Chang
341 Tideway Drive #214
Alameda, CA 94501

ALL OTHER COUNSEL SERVED VIA ELECTRONIC FILING

Dated: February 13, 2008

RICHARD W. WIEKING, CLERK

By: /s/
Leni Doyle
Deputy Clerk